

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

CG Docket No. 02-278;
DA 04-3837

1 The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,900 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

established business relationship. MBA fully supports federal preemption of § 501.059 of the Florida statute.

The Florida statute states that “[n]o person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.”² The Florida statute makes no exception to this requirement for calls that are placed to persons with whom the caller has an established business relationship. By contrast, the Commission’s rules provide that a person or entity may initiate a telephone call to a residential line “using an artificial or prerecorded voice to deliver a message without the express prior consent of the called party . . .” if the call is made “to any person with whom the caller has an established business relationship at the time the call is made.”³ The provisions of the Florida statute that restrict the use of prerecorded messages, without creating an “established business relationship” exception, are inconsistent with the Commission’s rules when applied to interstate calls.

We believe this inconsistency will require mortgage lenders to block many interstate calls that would otherwise be permissible under the federal statute. Florida’s law frustrates the federal objectives of creating a uniform national telemarketing rule. The conflict between Florida and federal law creates greater complexity, compliance costs and risk for the mortgage industry and other telemarketers. Effectively, mortgage companies wishing to do business in

² Fla. Stat. § 501.059(7)(a).

³ 47 C.F.R. § 64.1200(a)(2), (a)(2)(iv).

Florida would be subject to more stringent requirements than those operating in other states. As a result, we respectfully reiterate our support for the preemption of Florida Statute § 501.059 that prohibits leaving prerecorded voice messages even when the caller has an established business relationship with the recipient.

Respectfully submitted,

A handwritten signature in black ink, reading "Jonathan L. Kempner". The signature is fluid and cursive, with the first name "Jonathan" being more prominent and the last name "Kempner" following in a similar style.

Jonathan L. Kempner
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Dated: February 3, 2005